

City Council Minutes – August 22, 2016

Mayor Laurie Gere called to order the regular Anacortes City Council meeting of August 22, 2016 at 6:00 p.m. Councilmembers Eric Johnson, Ryan Walters, Erica Pickett, Brad Adams, Liz Lovelett and John Archibald were present. Councilmember Matt Miller was absent. Mayor Gere reported that Mr. Miller was out of the country. The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor's Award of Merit: Mayor Gere presented the Award of Merit to Building Plans Examiner Paul Ingalls. Mr. Ingalls received a certificate and had his name added to the plaque of Award of Merit winners displayed in City Hall.

Ms. Lovelett reported from the Parks and Recreation Committee which met the prior Thursday and discussed progress on the Storvik Park spray pad, capital planning and ongoing renovations at the Washington Park upper restroom.

Mr. Johnson reported that the Community Services panel of the Affordable Housing and Community Services Committee met August 11, 2016 and formed into four teams to investigate different topics that offer opportunities for immediate action including a community resource center, a Fidalgo Village program to assist seniors to stay in their own homes, providing early learning and infant care, and coordinating currently available food security programs. He elaborated on each of those topics, invited the public to an informational meeting on the Fidalgo Village project on September 29, 2016 at 6:00 p.m. at the Anacortes Public Library, and advised that the Whitney School toddler early learning program is in need of a new space to continue the program.

Mr. Archibald reported that the Lodging Tax Advisory Committee met the prior Thursday, discussed and approved an application for funds to support more music at the Heart of Anacortes, and discussed expanding the committee to include more members.

Public Comment

No one present wished to address Council on any topic not already on the agenda.

Consent Agenda

Ms. Lovelett removed Items 5g and 5h from the Consent Agenda. Mr. Adams removed Item 5f from the Consent Agenda.

Mr. Johnson moved, seconded by Mr. Archibald, to approve the following Consent Agenda items. The motion passed unanimously by voice vote.

- a. Minutes of August 15, 2016
- b. Approval of Claims in the amount of: \$172,444.07
- c. Contract Award: Treatment Plant Chemicals
- d. Contract Award: Storm Sewer Pond & Swale Improvements
- e. Resolution 1968: Write Off Uncollectible Billing Balances

The following vouchers/checks were approved for payment:

Voucher (check) numbers: 81694 through 81790, total \$199,751.72

EFT numbers: 206379 through 207288, total \$16,372.72

- f. Ordinance 2983: Amending 2015-2016 CFP
- g. Ordinance 2984: Amending 2016 Budget
- h. Ordinance 2987: Amending 2016 Budget

Mr. Adams asked if the city had reached any agreement with the Anacortes School District about how the District would pay for its portion of the Operations Shop roofing project. Finance Director Steve Hoglund reported that he and the mayor had met with the School District the prior week. He referenced the current agreement with the District included in the evening's packet materials. He said the District budget cycle was already complete for the year but that City staff would meet with District personnel after the roofing project was complete and work with them to get the District's 40% portion paid back to the City. Mr. Hoglund added that the City's portion of the project would be funded with real estate excise tax (REET) and that the District's share would be paid with general funds pending repayment by the District. Mr. Hoglund explained that Ordinances 2984 and 2987 were both amendments to the 2016 budget, the latter addressing only the Operations Shop roofing project. Ms. Lovelett urged more proactive asset management and inclusion of projects such as the roofing project in the Capital Facilities Plan. Ms. Lovelett moved, seconded by Mr. Adams, to approve Consent Agenda Items 5f, 5g and 5h. The motion passed 5 to 1 by voice vote with Mr. Walters voting against.

PUBLIC HEARINGS

Continued Closed Record Public Hearing to Decide on Appeals and Planning Commission's Recommendation on the Haddon Road 13 Lot Plat & PUD, PUD-2016-1001

Mayor Gere advised that appellants would be given 3-5 minutes each to respond to the applicant's presentation at the August 15, 2016 closed record hearing, then other parties of record who wished to speak would be sworn in and allowed to speak, then the applicant would be given 15-30 minutes to respond.

All testimony was recorded and both audio and video recordings were posted on the City of Anacortes website and made part of the permanent record.

Appellant Vernon Lauridsen, 2219 32nd Street, summarized his presentation from the August 15, 2016 meeting. He addressed the code modifications requested by the applicant and argued that the code does not provide for those modifications, specifically road standards, density and access to flag lots. Mr. Lauridsen argued that a conditional use permit should be required to achieve what the applicant had proposed. He also argued that Mr. Ravnik had not provided evidence that the downstream storm drainage issues had been addressed.

Appellant Patricia Young, 2219 32nd Street, cited the 2016 Comprehensive Plan regarding hazardous areas and responded to geotechnical reports in the record regarding setbacks from the slope. Ms. Young urged Council to protect the people, property and environment of Anacortes by upholding AMC 17.70.260 requiring a minimum buffer on a critical slope equal to the height of the slope or 50 feet, whichever is greater.

Appellant Patrick O'Hearn, 11039 Post Drive, responded to the applicant's assertion that the proposed PUD relied on precedent as well as code. Mr. O'Hearn argued that there are no flag lots in Fir Crest so that does not provide a precedent for the subject PUD. Mr. O'Hearn said that if the subject PUD adopted a lot configuration similar to Fir Crest the lots would be well under the required 7500 SF which was not allowable without code modifications. Mr. O'Hearn responded to Mr. Nicol's argument that the code provides no direction on flags and that they should thus be allowed as proposed. Mr. O'Hearn said there are no shared access flag lots in the R1 zone, no precedent for shared access flag lots, and no reason for them other than maximizing profit. He said this would be a grant of special privilege, would weaken the codes, and was not required by any special circumstance.

Appellant Carol O'Hearn, 11039 Post Drive, said that clear cutting the top two acres of the property would increase drainage and water migration downslope. She said Mr. Ravnik's presentation focused on 100 year maximum rainfall and said a single 24-hour event would not be a problem. Ms. O'Hearn quoted a professional report (GEAR) regarding soil conditions during the weeks of heavy rain leading up to the Oso slide and argued that cumulative rainfall also needed to be considered. She reiterated that pistol butted

trees provide evidence of down slope movement of the ground and instability. Ms. O'Hearn said the city needed to require geotechnical studies during the wet season.

Craig Sjoström, 1204 Cleveland Avenue, Mount Vernon, attorney representing appellants Patrick and Carol O'Hearn, called the proposed PUD a poster child for the city's recent moratorium on new PUD applications. Mr. Sjoström said it was the applicant's job to propose a plan that satisfied all the requirements and that it had not done that. Mr. Sjoström disagreed with the applicant's interpretation of *Maranatha Mining v. Pierce County*. He said the appellants had presented convincing arguments that the PUD should be denied. Mr. Sjoström argued that the PUD ordinance did not have unambiguous standards for approving PUDs so by definition approving the subject PUD would be arbitrary and capricious. Mr. Sjoström repeated his argument that the PUD ordinance also violated the Growth Management Act because it provided for more than one open record public hearing. He argued that project approvals under the current PUD ordinance would be invalid and subject to judicial reversal under the Land Use Petition Act. He concluded that Council must deny the application because it did not comply with the letter or the spirit of applicable city ordinances or state law.

Appellant Allen Rhoades, 4105 Mitchell Drive, speaking as president of Stittwood Homeowner's Association, said there was still no specific plan to prove that the stormwater sewer system would be able to handle the flow from the PUD. He said the HOA was unsure about the safety of that stormwater.

Appellant Allen Rhoades, speaking on his own behalf, reminded Council of the inconsistencies in the code with respect to PUDs. He said there was too much room for interpretation in the code. He said if it took 11-12 homes for the developer to make a reasonable profit, without following the intent of the code, then maybe the time wasn't right for the project. He urged Council to protect the intent of the code and allow the PUD code process to be rewritten under the current moratorium.

Appellant Deborah Martin, 6407 Dow Lane, said the applicant's arguments for the PUD did not fit the intent of the pertaining laws. She spoke to how a community creates its laws, quoting the 2016 Comprehensive Plan and citing extensive community input. Ms. Martin said Haddon Road was historically the last rural edge of the city and was part of the town's historical culture. She said that given the city policy of protecting the natural environment, Council's decision must acknowledge that the highest utility for this property may require retaining clusters of mature upland trees integral to the critical slope, wetland, wildlife and adjacent property protection. She urged Council to rule in favor of a new, truly creative plan with lot lines drawn respecting the rural character and environmental reality of this property within the law of R1 density.

No other appellants wished to address Council. Mayor Gere opened the floor to other parties of record.

Mayor Gere swore John Prosser, party of record, to tell the truth in his testimony.

John Prosser, 3018 Commercial Ave, real estate broker, said he had sold the subject property to applicant Allen Family Investments. Said he had evaluated the property at the time of listing and felt a PUD was best option for the property due to the slope and usable land. He said the code allowed for up to 20 units on 5 acres in a PUD in R1. He described the Fir Crest development and said he knew of at least eight PUDs that did not have sidewalk, curb and gutter. He said the PUD ordinance encouraged creative and highest use of the property. He cited the dense multifamily development directly north of the subject property. Mr. Prosser said Anacortes needed more housing to meet its population allocation and had determined it would do that through infill rather than expanding the UGA. He quoted figures about the number of properties listed, pending and sold in Anacortes.

Mr. Rhoades objected that Mr. Prosser was not an appellant nor a party of record for the closed record hearing. Acting City Attorney Brad Furlong said the closed record hearing was not limited only to appellants and the applicant but also to parties of record at the Planning Commission who were allowed to speak on matters within the record. Mr. Furlong added that if Mr. Prosser had introduced new evidence that was not in the record, it should be disregarded.

Mayor Gere swore Sara Holahan, party of record, to tell the truth in her testimony.

Sara Holahan, 1511 38th Street, said the City needed to be careful what it was using for property lot definitions. She said the applicant was manipulating the definition of a property lot, that a lot needed to have a front, back and side yards, setbacks, and 30 feet of street frontage. She said the houses would not have the required street frontage or front yard setbacks as drawn. She said the plan should be denied until it met the definitions of a property lot per the Anacortes Municipal Code.

Mayor Gere swore Bud Anderson, party of record, to tell the truth in his testimony.

Bud Anderson, 11067 Post Drive, reviewed his testimony before the Planning Commission, addressing the issue of safety due to the location of the power pole at the corner of Whistle Lake and Haddon Roads extremely close to the travel lane.

No other parties of record wished to address Council. Mayor Gere invited the applicant to address Council for approximately 30 minutes.

Applicant Brian Allen, 14592 Snee-Oosh Road, La Conner, said Council's job was to foster development within precedent, the Anacortes Municipal Code and the Growth Management Act. Mr. Allen reviewed a series of slides, which were added to the record (Exhibit 76), addressing objections raised by appellants including the configuration of flag lots, configuration of lot/road connections, minimum setbacks, possible lot configurations, required street frontage, professional reports by geotechnical and engineering experts, slope stability and the distinction between the subject project slope and other slope situations cited by appellants, ability of the site to handle stormwater, planned protection of the slope including tree preservation, other potential lot configurations for the subject project depending on conditions that might be imposed or adopted by Council, and the four proposed code modifications in the PUD application. Mr. Allen closed by preferring the 13-lot PUD as submitted but accepting the Planning Commission's recommended conditions of approval which essentially created an 11-lot PUD if necessary. He said if Council did not accept the limited code modifications requested, AFI would go to a different lot configuration under the same PUD application. Mr. Allen underscored that AFI had worked with staff to develop the PUD proposal. He listed the neighborhood improvements already offered, including improving water pressure along the entire road, the pedestrian path, and the stormwater system. He reiterated that AFI asked Council to follow code and precedent.

John Ravnik, PO Box 361, Burlington, civil engineer for the applicant, said he had been tasked with asking consultant MTC to consolidate its investigations and findings. He distributed a copy of MTC's August 22, 2016 memorandum to Tom Allen summarizing MTC's findings, which was added to the packet materials for the evening. Mr. Ravnik spoke to the memorandum and shared the MTC conclusion that the design infiltration from the proposed development would not create a negative effect on the adjacent critical area slope.

Steven Nicol, 904 South 3rd Street, Mount Vernon, representing the applicant, addressed several of the appellants' rebuttal arguments. Mr. Nicol argued against Mr. Sjoström's position on the city's PUD ordinance, reiterated the applicant's position on *Maranatha*, and disagreed that Mr. Lauridsen's cites applied to the proposed project. Mr. Nicol responded to questions from Ms. Lovelett and Mr. Archibald regarding density calculations, applicability of R2 standards and equivalency for the proposed flag lot configuration. Applicant Brian Allen returned to the microphone to address questions about traffic and equivalency. He reiterated that if Council abided by Title 17 the applicant did not need any of the four requested code modifications.

At 8:04 p.m. Mayor Gere called a ten minute recess. At approximately 8:13 p.m. the mayor called the meeting back to order.

Mr. Allen responded to councilmember questions about the slope and geotechnical investigations and the proposed flag lot configuration.

At 8:20 p.m., councilmembers having no further questions for the applicant or the appellants, Mayor Gere closed the closed record public hearing to decide on the appeals and Planning Commission recommendation for the Haddon Road short plat and PUD, project PUD-2016-1001.

Mr. Furlong advised that the next step was for Council to discuss the evidence and reach a decision on both the appeals and the Planning Commission recommendation. He said it would make the most sense for Council to decide whether it wanted to deny the permit outright, accept the Planning Commission recommendation, or approve the project with modified conditions. That would decide both the project and the appeals because all the appeals request the same relief (complete rejection of the project). Staff would then draft Findings of Fact and Conclusions of Law consistent with Council direction. Mr. Furlong reminded Council that its decision must be based on the ordinances that applied and that a basis should be stated for any conditions imposed.

Ms. Pickett provided background on the purpose and historical use of the city's PUD ordinance. She said the record included no evidence that the proposed PUD would harm neighboring property values but did indicate that the neighborhood would achieve increased water pressure and a pedestrian path at no cost to existing residents. She supported the proposed PUD.

Mr. Walters proposed discussing issues raised by the appellants one at a time. Council then deliberated regarding whether R2 density was allowed in the R1 zone under a PUD. Councilmembers generally agreed that was the appropriate reading of the code. Ms. Lovelett disagreed.

Council then deliberated on the code modification process. Councilmembers generally agreed that the PUD code applied rather than AMC 16.24 in this case. Ms. Lovelett had reservations on this issue.

Council then deliberated on open space requirements. Councilmembers generally agreed that the Planning Commission recommended conditions of approval achieved more than the required open space. Ms. Lovelett cited AMC 16.40.102, saying that land unsuitable for building doesn't count as open space.

Council then deliberated on geotechnical and stormwater management concerns raised by appellants. Mr. Walters argued for deferring to the professional opinions in this regard. Several of his colleagues agreed. Staff responded to councilmember questions about drainage plan requirements prior to construction and the hazardous area covenant to be recorded on the face of the plat.

Council then began deliberating regarding required street frontage and whether the appropriate requirement was 30 feet per AMC 16.30.040 or 20 feet per Title 17. Council also discussed whether the shared driveway width proposed was appropriate. Ms. Lovelett displayed a sketch, which was added to the record (Exhibit 75), showing an alternative lot layout that would not require flat lots.

Given the late hour, at 9:30 p.m. Mayor Gere recommended continuing the meeting to Monday, August 29, 2016.

Mr. Walters moved, seconded by Ms. Lovelett, to exclude Mr. Prosser's comments from consideration to the extent they were not already in the record. Vote: Ayes – Walters, Pickett, Adams, Lovelett, Archibald and Johnson. Motion carried.

Mr. Furlong reminded councilmembers that they were in a quasi-judicial posture and recommended that they not engage in any conversation or consider any more written comments outside the record until they reconvened to consider the matter on August 29, 2016.

Mayor Gere continued Council deliberation on appeals and Planning Commission's Recommendation on the Haddon Road 13 Lot Plat & PUD, PUD-2016-1001 to 6:00 p.m. on August 29, 2016 in the City Council chambers.

There being no further business, at approximately 9:33 p.m. the Anacortes City Council meeting of August 22, 2016 was adjourned.